

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CYMEYON V. HILL,
Plaintiff,

v.

NURSE BRIDGETT,
Defendant.

Case No. [24-cv-03091-YGR](#) (PR)

**ORDER OF PARTIAL DISMISSAL
AND SERVICE**

I. INTRODUCTION

Plaintiff, a civil detainee currently being held in custody at Napa State Hospital (“NSH”), filed a *pro se* civil rights complaint pursuant to 42 U.S.C. § 1983. Venue is proper because the events giving rise to the claim is alleged to have occurred in NSH, which is located in this judicial district. *See* 28 U.S.C. § 1391(b). Plaintiff’s motion for leave to proceed *in forma pauperis* will be granted in a separate order.

Plaintiff has named Nurse Bridgett at NSH as the only defendant in this matter. Dkt. 1 at 1.¹ Plaintiff seeks monetary damages. *Id.* at 3.

II. DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *Id.* § 1915A(b)(1), (2). *Pro se* pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:

¹ Page number citations refer to those assigned by the Court’s electronic case management filing system and not those assigned by plaintiff.

(1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

B. Legal Claims

Plaintiff, who was civilly committed in 1997 following a plea of not guilty by reason of insanity, alleges the following took place on May 14, 2024. Dkt. 1 at 3. He claims that while he was in the Unit T8 dining room, defendant told plaintiff that “she was going to make sure plaintiff would suffer today and she was going to punish [him] for filing lawsuits.” *Id.* Plaintiff claims that “defendant then started laughing and told the kitchen staff don[’]t feed [plaintiff] . . . [and] plaintiff was then refused to be fed by [the] kitchen staff . . . [and] defendant Bridgett then told plaintiff you have another punishment.” *Id.*

To state a claim for First Amendment retaliation against a government official, a plaintiff must demonstrate that (1) he engaged in constitutionally protected activity; (2) as a result, he was subjected to adverse action by the defendant that would chill a person of ordinary firmness from continuing to engage in the protected activity; and (3) there was a substantial causal relationship between the constitutionally protected activity and the adverse action. *Mulligan v. Nichols*, 835 F.3d 983, 988 (9th Cir. 2016). Plaintiff has stated a cognizable First Amendment retaliation claim against defendant.

To the extent that plaintiff’s complaint states a claim against defendant of verbal harassment and threats, such a claim is DISMISSED. *See Freeman v. Arpaio*, 125 F.3d 732, 738 (9th Cir. 1997) (Allegations of verbal harassment and abuse fail to state a claim cognizable under 42 U.S.C. § 1983.); *see also Gaut v. Sunn*, 810 F.2d 923, 925 (9th Cir. 1987) (mere threat does not constitute constitutional wrong, nor do allegations that naked threat was for purpose of denying access to courts compel contrary result).

III. CONCLUSION

For the foregoing reasons, the Court orders as follows:

1. Plaintiff has stated a cognizable First Amendment retaliation claim against defendant.

2. Plaintiff's claim against defendant of verbal harassment and threats is
DISMISSED.

3. The Clerk of the Court shall mail a Notice of Lawsuit and Request for Waiver of Service of Summons, two copies of the Waiver of Service of Summons, a copy of the complaint and all attachments thereto (dkt. 1), and a copy of this Order to **Nurse Bridgett at Napa State Hospital, ATTN: Litigation Coordinator, 2100 Napa Vallejo Hwy, Napa, CA 94558**. The Clerk also shall mail a copy of the complaint and a copy of this Order to the State Attorney General's Office in San Francisco. Additionally, the Clerk shall mail a copy of this Order to plaintiff.

4. Defendant is cautioned that Rule 4 of the Federal Rules of Civil Procedure requires defendant to cooperate in saving unnecessary costs of service of the summons and complaint. Pursuant to Rule 4, if defendant, after being notified of this action and asked by the Court, on behalf of plaintiff, to waive service of the summons, fails to do so, defendant will be required to bear the cost of such service unless good cause be shown for the failure to sign and return the waiver form. If service is waived, this action will proceed as if defendant had been served on the date that the waiver is filed, except that pursuant to Rule 12(a)(1)(B), defendant will not be required to serve and file an answer before **sixty (60) days** from the date on which the request for waiver was sent. (This allows a longer time to respond than would be required if formal service of summons is necessary.) Defendant is asked to read the statement set forth at the foot of the waiver form that more completely describes the duties of the parties with regard to waiver of service of the summons. If service is waived after the date provided in the Notice but before defendant personally has been served, the Answer shall be due **sixty (60) days** from the date on which the request for waiver was sent or **twenty (20) days** from the date the waiver form is filed, whichever is later.

5. Defendant shall answer the complaint in accordance with the Federal Rules of Civil Procedure. The following briefing schedule shall govern dispositive motions in this action:

a. No later than **sixty (60) days** from the date their answer is due, defendant shall file a motion for summary judgment or other dispositive motion. The motion must be

supported by adequate factual documentation, must conform in all respects to Federal Rule of Civil Procedure 56, and must include as exhibits all records and incident reports stemming from the events at issue. A motion for summary judgment also must be accompanied by a *Rand*² notice so that plaintiff will have fair, timely and adequate notice of what is required of him in order to oppose the motion. *Woods v. Carey*, 684 F.3d 934, 935 (9th Cir. 2012) (notice requirement set out in *Rand* must be served concurrently with motion for summary judgment). A motion to dismiss for failure to exhaust available administrative remedies must be accompanied by a similar notice. However, the Court notes that under the new law of the circuit, in the rare event that a failure to exhaust is clear on the face of the complaint, defendant may move for dismissal under Rule 12(b)(6) as opposed to the previous practice of moving under an unenumerated Rule 12(b) motion. *Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014) (overruling *Wyatt v. Terhune*, 315 F.3d 1108, 1119 (9th Cir. 2003), which held that failure to exhaust available administrative remedies under the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), should be raised by a defendant as an unenumerated Rule 12(b) motion). Otherwise if a failure to exhaust is not clear on the face of the complaint, defendant must produce evidence proving failure to exhaust in a motion for summary judgment under Rule 56. *Id.* If undisputed evidence viewed in the light most favorable to plaintiff shows a failure to exhaust, defendant is entitled to summary judgment under Rule 56. *Id.* But if material facts are disputed, summary judgment should be denied and the district judge rather than a jury should determine the facts in a preliminary proceeding. *Id.* at 1168.

If defendant is of the opinion that this case cannot be resolved by summary judgment, defendant shall so inform the Court prior to the date the summary judgment motion is due. All papers filed with the Court shall be promptly served on plaintiff.

b. Plaintiff's opposition to the dispositive motion shall be filed with the Court and served on defendant no later than **twenty-eight (28) days** after the date on which defendant's motion is filed.

c. Plaintiff is advised that a motion for summary judgment under Rule 56 of

² *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998).

1 the Federal Rules of Civil Procedure will, if granted, end your case. Rule 56 tells you what you
2 must do in order to oppose a motion for summary judgment. Generally, summary judgment must
3 be granted when there is no genuine issue of material fact—that is, if there is no real dispute about
4 any fact that would affect the result of your case, the party who asked for summary judgment is
5 entitled to judgment as a matter of law, which will end your case. When a party you are suing
6 makes a motion for summary judgment that is properly supported by declarations (or other sworn
7 testimony), you cannot simply rely on what your complaint says. Instead, you must set out
8 specific facts in declarations, depositions, answers to interrogatories, or authenticated documents,
9 as provided in Rule 56(c), that contradicts the facts shown in the defendant’s declarations and
10 documents and show that there is a genuine issue of material fact for trial. If you do not submit
11 your own evidence in opposition, summary judgment, if appropriate, may be entered against you.
12 If summary judgment is granted, your case will be dismissed and there will be no trial. *Rand*, 154
13 F.3d at 962-63.

14 Plaintiff also is advised that—in the rare event that defendant argues that the failure to
15 exhaust is clear on the face of the complaint—a motion to dismiss for failure to exhaust available
16 administrative remedies under 42 U.S.C. § 1997e(a) will, if granted, end your case, albeit without
17 prejudice. To avoid dismissal, you have the right to present any evidence to show that you did
18 exhaust your available administrative remedies before coming to federal court. Such evidence
19 may include: (1) declarations, which are statements signed under penalty of perjury by you or
20 others who have personal knowledge of relevant matters; (2) authenticated documents—
21 documents accompanied by a declaration showing where they came from and why they are
22 authentic, or other sworn papers such as answers to interrogatories or depositions; (3) statements
23 in your complaint insofar as they were made under penalty of perjury and they show that you have
24 personal knowledge of the matters state therein. As mentioned above, in considering a motion to
25 dismiss for failure to exhaust under Rule 12(b)(6) or failure to exhaust in a summary judgment
26 motion under Rule 56, the district judge may hold a preliminary proceeding and decide disputed
27 issues of fact with regard to this portion of the case. *Albino*, 747 F.3d at 1168.

28 (The notices above do not excuse defendant’s obligation to serve similar notices again

concurrently with motions to dismiss for failure to exhaust available administrative remedies and motions for summary judgment. *Woods*, 684 F.3d at 935.)

d. Defendant shall file a reply brief no later than **fourteen (14) days** after the date plaintiff's opposition is filed.

e. The motion shall be deemed submitted as of the date the reply brief is due. No hearing will be held on the motion unless the Court so orders at a later date.

6. Discovery may be taken in this action in accordance with the Federal Rules of Civil Procedure. Leave of the Court pursuant to Rule 30(a)(2) is hereby granted to defendant to depose plaintiff and any other necessary witnesses confined in prison.

7. All communications by plaintiff with the Court must be served on defendant or defendant's counsel, once counsel has been designated, by mailing a true copy of the document to them.

8. It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court informed of any change of address and must comply with the Court's orders in a timely fashion. Pursuant to Northern District Local Rule 3-11, a party proceeding *pro se* whose address changes while an action is pending must promptly file a notice of change of address specifying the new address. *See* L.R. 3-11(a). The Court may dismiss without prejudice a complaint when: (1) mail directed to the *pro se* party by the Court has been returned to the Court as not deliverable, and (2) the Court fails to receive within sixty days of this return a written communication from the *pro se* party indicating a current address. *See* L.R. 3-11(b).

9. Upon a showing of good cause, requests for a reasonable extension of time will be granted provided they are filed on or before the deadline they seek to extend.

IT IS SO ORDERED.

Dated: October 9, 2024


JUDGE YVONNE GONZALEZ ROGERS
United States District Judge